

Senate Committee on Environment and Public Works
“Better, Faster, Cheaper, Smarter, and Stronger: Infrastructure Development
Opportunities to Drive Economic Recovery and Resiliency”
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July 1, 2020

Introduction

Thank you, Chairman Barrasso and Ranking Member Carper, for inviting me to participate in this important discussion about infrastructure development and investment in the face of economic recovery and climate change. The truth is that infrastructure policy cannot be divorced from its implications for climate change, land use, structural racism, and the health of our communities. America’s Transportation Infrastructure Act (S. 2302) takes some important steps to grapple with these implications, for which I congratulate the Environment and Public Works Committee. When it comes to transportation infrastructure, we all must work to ensure that we as a country include community input; ameliorate, not exacerbate climate change and other major environmental hazards; and protect civil rights.

When this committee marked up its reauthorization bill almost a year ago (July 30, 2019), few anticipated that we would now be simultaneously facing an unprecedented global health crisis, a nationwide economic recession, and a nationwide uprising against racism and police violence. Meanwhile, the dire impacts of climate change have started to accelerate, with extreme weather events such as flooding, hurricanes, and wildfires causing billions of dollars in destruction annually. As communities of color and low income communities continue to suffer from COVID-19 and police violence, they are being disproportionately wracked by climate impacts as well.

Climate Change

The best time to incorporate the imperatives of climate change into transportation policy was 30 years ago. The second-best time is now. Achieving net-zero greenhouse gas emissions by 2050 will require immediate and wholesale changes to land use and infrastructure policy in the United States, along with enormous investments to prepare for the changes in climate that we have already set into motion.

The \$10 billion Climate Change subtitle in America’s Transportation Infrastructure Act (ATIA), the first ever in a transportation bill, is a notable step in that direction, amounting to about 3.5% of the proposed highway spending. This includes \$4.9 billion over five years in Sec. 1407 to start retrofitting or relocating some of the nation’s most vulnerable infrastructure, beginning to make our transportation system and communities more resilient to extreme weather. The title also creates a \$3.5 billion incentives-based program in Sec. 1403 to reward states that substantially reduce transportation-related greenhouse gas emissions over the next five years, encouraging states to think creatively and honestly about their transportation systems as a whole. The new provisions of ATIA, if sufficiently funded, would give state departments of transportation the tools and the incentives to recognize that their decisions have a major influence on the severity of climate change and our ability to withstand it.

This bill also starts to address the disparate effects of climate change and pollution on Black and other communities of color through provisions that reduce emissions while also reducing these communities’

toxic burden of pollution. For example, Sec. 1402--Reduction of Truck Emissions at Port Facilities--serves to reduce emissions at ports by providing grants to reduce idling and support port electrification. This competitive grant program could achieve the dual goals of reducing greenhouse gas emissions and pollution, improving the health of port-adjacent communities which overwhelmingly tend to be communities of color. The same is true of Sec. 1408, reauthorizing the Diesel Emissions Reduction Act (DERA); which provides incentives to take the dirtiest vehicles off the road.

At a time when Congress is considering how infrastructure funding may help to revitalize our economy and set it up for long-term success, forward-thinking climate-oriented investments are essential. Building infrastructure that is prepared for future disasters, through making changes to projects before construction rather than trying to remediate after the fact, is good government and deeply cost-beneficial. Supporting the electrification of the vehicle fleet, including through the \$1 billion in grant funding under Sec. 1401 for which electric charging infrastructure projects can compete, will make our economy more competitive internationally. Increasing the funding set-aside for the Transportation Alternatives Program from \$850 million to \$1.3 billion annually in Section 1109(b) will make our communities healthier, safer, and more equitable in ways that people can immediately understand. And investing in natural infrastructure in the form of coastal restoration and resilience, through the aforementioned \$4.9 billion in Sec. 1407's PROTECT grants, is a win-win-win for our economy, our frontline communities, and our environment.

Perhaps the most significant aspect of the climate change subtitle in this bill is that there should never again be a transportation bill that fails to invest in climate mitigation and resilience. Momentum is already building in the right direction. Consider how the House's current infrastructure bill, likely being voted on this week, H.R. 2., begins to incorporate climate policy into the core highway funding programs, in addition to creating new funding programs similar to ATIA for adaptation and mitigation. This kind of bicameral interest in reform represents a critical recognition that infrastructure policy is climate policy.

Yet we still have much more work to do. In order to limit climate change to a global increase of 1.5 degree Celsius as [the scientists say we must](#), and to adapt to the impacts that cannot be avoided, we must be more ambitious still. The Center for American Progress published [a report](#) last October on the many policy reforms we must pursue to build a 100% Clean Future, of which additional infrastructure funding is just one part. Similarly, the House Select Committee on the Climate Crisis yesterday released its own [report](#), making clear the enormous range of policy responses required to address climate change, and the incredible opportunities that ambitious climate action can unlock for our economy, our health, and the wellbeing of our children and grandchildren.

Environmental Review

It is important to note that the climate funding in this bill cannot be put to good use in a way that will build resilient, climate-ready infrastructure without proper planning, community engagement, and public review of the anticipated results. In fact, this planning is critical--not antithetical--to the rapid permitting and construction of resilient transportation and infrastructure projects that will serve communities, reduce climate-causing pollution in overburdened neighborhoods, and withstand the future impacts of climate change that we can not avoid. As this Committee is aware, this environmental review is the purview of the National Environmental Policy Act, or NEPA, which you are all quite familiar with and which is currently under significant and overreaching [attack](#) from the Trump administration.

NEPA and its implementing regulations for Federal agencies ensure that all potential impacts on a community as a result of a project are considered, and also that the public has an opportunity to comment on projects that may impact them. NEPA is a procedural statute only. While environmental and public health impacts must be assessed and project alternatives considered, NEPA does not require an agency to choose the most environmentally sound option, just to do the work to gather information and inform the public of potential impacts.

More than that, however, NEPA is simply good policy, [supported](#) by 80% of Americans. Federal projects require hundreds of millions, often billions, of taxpayer dollars. It does not make sense to leap before we look, and build an expensive new highway in a location that is going to be underwater in five years as a result of climate change impacts like flooding and sea level-rise. Environmental review [protects](#) against that kind of waste.

NEPA and the environmental review process also underscore that Black lives matter, by ensuring that all communities, and particularly communities of color, have a voice in transportation and infrastructure decisions that affect their neighborhoods and livelihoods. Without NEPA, and with the changes that the Trump administration is near to finalizing for NEPA's implementing regulations for agencies, communities would be silenced, unable to push back on projects that may make it harder for them to breathe. For example, [Mossville, Louisiana](#), was formed by freed former enslaved people in the 1790s, becoming one of the first vibrant Black communities in the south. Today, however, it sits in the center of an area known as Cancer Alley thanks to the number of polluting industry facilities now located in and around it. Testing has shown higher levels of cancer-causing dioxins in Mossville residents' blood that can be tied back to emissions from facilities in the area. Mossville is a perfect example of a community where environmental review is critical. It would not make sense to build yet another chemical manufacturing plant there and consider its additional impacts in isolation from the existing pollution in the community. Yet the Trump administration wants to do just that, by entirely removing the requirement that agencies consider the cumulative impacts of a project.

The ways in which proper NEPA analysis, including a review of cumulative impacts, intersect with environmental justice are particularly poignant in the current moment when members of Black, Latino and Indigenous communities are being hospitalized with COVID [at rates](#) four to six times higher than their white counterparts. This is particularly stark given the Harvard Journal of Medicine [study](#) which found that higher rates of air pollution exposure, specifically to small particulate matter, was correlated with an increase in mortality rates from COVID. The study also notes that it is disproportionately Black and Latino Americans who live in these areas of higher air pollution, often as a result of communities [situated near highways](#) and other areas of congestion where tailpipe emissions are higher and more frequent. Underscoring this, the Rhodium Group released [an analysis](#) on June 29, 2020 that found that the average Black American is exposed to 46% more diesel particulate matter emissions and 22% more air toxic respiratory hazards than white Americans. The Rhodium Group writes:

"The point of this analysis is to demonstrate that the same communities that have borne the brunt of the impact of COVID-19 this year have borne the brunt of the impact of air, water, toxic, and hazardous waste pollution for decades prior. As Congress turns its attention to legislation to help the economy recover from a COVID-19-induced recession, there are opportunities to do so while taking a step toward correcting historical environmental injustices."

These findings underscore that historic and continuing racial health disparities are a factor that must be considered by transportation and infrastructure legislation, policy, and planning. Further, these statistics show why we so critically need NEPA and not the chopped up, legally uncertain version of the statute that the Trump administration is serving up, which will increase litigation without promoting faster project delivery. Yet the Trump administration's proposed changes to the NEPA implementing regulations would encourage conflicts of interest that undermine communities; complicate and confuse the process for community input, thereby silencing communities; and remove the requirement that agencies consider the cumulative impact of a project, thereby negating consideration of future climate change effects and exacerbating existing environmental justice issues.

If implemented correctly, and using all existing authorities, the existing NEPA process can save us time in the long run, can help avoid additional environmental injustices, and can save taxpayers money. As many members of this Committee know, but is worth stating again, only a small fraction of projects -- [less than one percent](#) -- require the more substantive Environmental Impact Statement (EIS) under NEPA, rather than a relatively quick Environmental Assessment or being covered by a categorical exclusion. Further, while there is a significant lack of data, [existing information](#) shows that the primary cause of slowed or stalled projects is not lengthy NEPA reviews, but instead a lack of funding.

And we already have the necessary tools to ensure that the NEPA process is fast, efficient, transparent and successful. But we cannot achieve these things unless we use those tools and invest in staff, basic tracking technology, and project management systems to get the work done. If there is any reason for the existing NEPA process not working as well as it should right now, it is because the Trump administration has slashed funding for agency staff and programs that implement NEPA; not invested in or implemented all of the authorities presently available; and politicized the NEPA process. But through existing legislation and authorities, the Trump administration has many options for expediting permitting that do not include gutting a critical and successful statute.

From my experience as the Managing Director of the Council on Environmental Quality (CEQ) under President Obama, I recommend the following:

- **Fully fund NEPA offices and programs at agencies** to ensure that they are fully staffed, that the staff have the training and expertise needed, and that the agencies have the resources they need to conduct successful and efficient environmental review. Over the last two decades, agencies [have seen their NEPA budgets shrink](#), and this has been [accelerated](#) under the Trump administration. The agencies that do the NEPA work have seen their budgets curtailed in recent years, meaning fewer staff and resources--and now they are being asked to go faster. The agencies and staff cannot do more with less--if our leaders are serious about actually expediting permitting and not just gutting environmental review, they must adequately fund these agencies.
- **Further invest in coordination and transparency for NEPA projects** through additional funding and attention to the [Permitting Dashboard for Federal Infrastructure Projects](#) and data collection for project processes. The Permitting Dashboard, where major federal projects are listed for agencies and the public to see the steps and project schedule, needs more funding to build out more functional tools (e.g. Geographic Information Systems technology) and to become a true interagency collaboration tool. With enough resources and investment, the Dashboard could even

host projects before an agency publishes a Notice of Intent, allowing cooperating agencies to plan ahead and prepare for significant projects, thereby streamlining the review process. Also, agencies should be directed to standardize data collection for all environmental review processes. Right now, there is [a significant lack of data](#) on the NEPA process, despite environmental review being continually blamed for project slowdowns. This would help to identify where commonalities in stalled projects lie, and provide common-sense and actionable lessons learned for Federal agencies.

- **Remove political influence from the environmental review process.** Under the Trump administration, political staff have been afforded significant sway in the environmental review process, slowing down or halting entirely reviews for their own reasons while NEPA is still blamed for project slowdowns. For example, the Environmental Protection Agency (EPA) [moved](#) its Office of Federal Activities, which reviews EISs, away from the Office of Enforcement and Compliance Assurance and into the Office of the Administrator. Further, after rushing environmental review processes for many significant onshore oil and gas leasing decisions, the Department of the Interior (DOI) has [turned the tables](#) on offshore renewable energy development and required a lengthy and unexpected review process, in essence halting several offshore wind projects. And this political interference reaches the highest levels of government. President Trump met with Senate Minority Leader Schumer in September 2017 to address the Hudson Gateway Tunnel project in a meeting that reportedly ended in general agreement around the need for the massive modernization project. Later, however, President Trump said he would only support funding for the project if the Senate authorized funds for a border wall; the Final EIS, which was due in March 2018, is still not out. In 2018, Politico Magazine [reported](#): “‘I wouldn’t say we’re slow-walking it,’ one administration official told me, before laughing. ‘OK, maybe a little.’”

Instead of going the way of the Trump administration and gutting NEPA, particularly at a time when future considering climate impacts and community input is more critical than ever, federal agencies and their partners should instead use these [existing tools](#) to permit and construct equitable and just transportation infrastructure.

Conclusion

The climate crisis is urgent and here--and this Committee’s work has set an important marker for underscoring that infrastructure policy is climate policy. We can take this a step further to acknowledge that climate justice, of the sort that would be fostered through this bill’s Climate Change subtitle and the critical environmental review that accompanies it, is also racial justice. It is time - and past time - that we assess infrastructure both for its role in future climate impacts and for its contributions to our communities’ ability to withstand climate change.

This bill is a good first step. Now, we must ensure that we are planning to the best of our abilities for the crisis ahead. With investment, community input, and careful planning, the climate crisis can be an opportunity to truly form a more perfect union, one built around justice, opportunity, and hope.